

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

**CHAPTER 227**

# **HOUSE BILL 2490**

AN ACT

AMENDING SECTION 13-1422, ARIZONA REVISED STATUTES; RELATING TO ADULT  
ORIENTED BUSINESSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1422, Arizona Revised Statutes, is amended to  
3 read:

4 13-1422. Adult oriented businesses; location; hours of  
5 operation; injunction; classification; definitions

6 A. AN ADULT ORIENTED BUSINESS SHALL NOT BE LOCATED WITHIN ONE-FOURTH  
7 MILE OF A CHILD CARE FACILITY, A PRIVATE, PUBLIC OR CHARTER SCHOOL, A PUBLIC  
8 PLAYGROUND, A PUBLIC RECREATIONAL FACILITY, A RESIDENCE OR A PLACE OF  
9 WORSHIP. FOR THE PURPOSES OF THIS SUBSECTION, MEASUREMENTS SHALL BE MADE IN  
10 A STRAIGHT LINE IN ALL DIRECTIONS, WITHOUT REGARD TO INTERVENING STRUCTURES  
11 OR OBJECTS, FROM THE NEAREST POINT ON THE PROPERTY LINE OF A PARCEL  
12 CONTAINING AN ADULT ORIENTED BUSINESS TO THE NEAREST POINT ON THE PROPERTY  
13 LINE OF A PARCEL CONTAINING A CHILD CARE FACILITY, A PRIVATE, PUBLIC OR  
14 CHARTER SCHOOL, A PUBLIC PLAYGROUND, A PUBLIC RECREATIONAL FACILITY, A  
15 RESIDENCE OR A PLACE OF WORSHIP. AN ADULT ORIENTED BUSINESS LAWFULLY  
16 OPERATING IN CONFORMITY WITH THIS SECTION DOES NOT VIOLATE THIS SECTION IF A  
17 CHILD CARE FACILITY, A PRIVATE, PUBLIC OR CHARTER SCHOOL, A PUBLIC  
18 PLAYGROUND, A PUBLIC RECREATIONAL FACILITY, A RESIDENCE OR A PLACE OF WORSHIP  
19 SUBSEQUENTLY LOCATES WITHIN ONE-FOURTH MILE OF THE ADULT ORIENTED BUSINESS.

20 ~~A-~~ B. An adult arcade, adult bookstore or video store, adult cabaret,  
21 adult motion picture theater, adult theater, escort agency or nude model  
22 studio shall not remain open at any time between the hours of 1:00 a.m. and  
23 8:00 a.m. on Monday through Saturday and between the hours of 1:00 a.m. and  
24 12:00 noon on Sunday.

25 ~~B. A violation of this section is a class 1 misdemeanor.~~

26 C. SUBSECTION A OF this section does not prohibit counties or  
27 municipalities from enacting and enforcing ordinances that regulate THE  
28 LOCATION OF ADULT ORIENTED BUSINESSES.

29 D. SUBSECTION B OF THIS SECTION DOES NOT PROHIBIT COUNTIES OR  
30 MUNICIPALITIES FROM ENACTING AND ENFORCING ORDINANCES THAT REGULATE ~~sexually~~  
31 ~~oriented businesses~~ AN ADULT ARCADE, ADULT BOOKSTORE OR VIDEO STORE, ADULT  
32 CABARET, ADULT MOTION PICTURE THEATER, ADULT THEATER, ESCORT AGENCY OR NUDE  
33 MODEL STUDIO in a manner that is at least as restrictive as subsection A- B  
34 of this section.

35 E. IF THERE IS REASON TO BELIEVE THAT A VIOLATION OF SUBSECTION A OF  
36 THIS SECTION IS BEING COMMITTED IN ANY COUNTY OR CITY, THE COUNTY ATTORNEY OF  
37 THE COUNTY SHALL, OR A CITIZEN OF THIS STATE WHO RESIDES IN THE COUNTY OR  
38 CITY IN THE CITIZEN'S OWN NAME MAY, MAINTAIN AN ACTION TO ABATE AND PREVENT  
39 THE VIOLATION AND TO ENJOIN PERPETUALLY ANY PERSON WHO IS COMMITTING THE  
40 VIOLATION AND THE OWNER, LESSEE OR AGENT OF THE BUILDING OR PLACE IN OR ON  
41 WHICH THE VIOLATION IS OCCURRING FROM DIRECTLY OR INDIRECTLY COMMITTING OR  
42 PERMITTING THE VIOLATION.

1 F. A VIOLATION OF SUBSECTION A OR B OF THIS SECTION IS A CLASS 1  
2 MISDEMEANOR. EACH DAY OF VIOLATION CONSTITUTES A SEPARATE OFFENSE.  
3 ~~D.~~ G. For the purposes of this section:  
4 1. "Adult arcade" has the same meaning prescribed in section 11-821.  
5 2. "Adult bookstore or video store" has the same meaning prescribed in  
6 section 11-821.  
7 3. "Adult cabaret" excludes any establishment licensed under title 4  
8 and includes any nightclub, bar, restaurant or other similar commercial  
9 establishment that regularly features:  
10 (a) Persons who appear in a state of nudity or who are seminude.  
11 (b) Live performances that are characterized by the exposure of  
12 specific anatomical areas or specific sexual activities.  
13 (c) Films, motion pictures, videocassettes, slides or other  
14 photographic reproductions that are characterized by the depiction or  
15 description of specific sexual activities or specific anatomical areas.  
16 4. "Adult motion picture theater" has the same meaning prescribed in  
17 section 11-821.  
18 5. "ADULT ORIENTED BUSINESS" HAS THE SAME MEANING PRESCRIBED IN  
19 SECTION 11-821.  
20 ~~5.~~ 6. "Adult theater" has the same meaning prescribed in section  
21 11-821.  
22 ~~6.~~ 7. "Escort" means a person who for consideration agrees or offers  
23 to act as a companion, guide or date for another person or who agrees or  
24 offers to privately model lingerie or to privately perform a striptease for  
25 another person.  
26 ~~7.~~ 8. "Escort agency" means a person or business association that  
27 furnishes, offers to furnish or advertises the furnishing of escorts as one  
28 of its primary business purposes for any fee, tip or other consideration.  
29 ~~8.~~ 9. "Nude model studio" has the same meaning prescribed in section  
30 11-821.  
31 ~~9.~~ 10. "Nude", "nudity" or "state of nudity" has the same meaning  
32 prescribed in section 11-821.  
33 11. "PLACE OF WORSHIP" MEANS A STRUCTURE WHERE PERSONS REGULARLY  
34 ASSEMBLE FOR WORSHIP, CEREMONIES, RITUALS AND EDUCATION RELATING TO A  
35 PARTICULAR FORM OF RELIGIOUS BELIEF AND WHICH A REASONABLE PERSON WOULD  
36 CONCLUDE IS A PLACE OF WORSHIP BY REASON OF DESIGN, SIGNS OR ARCHITECTURAL OR  
37 OTHER FEATURES.  
38 12. "RESIDENCE" MEANS A PERMANENT DWELLING PLACE.  
39 ~~10.~~ 13. "Seminude" has the same meaning prescribed in section 11-821.  
40 ~~11.~~ 14. "Specific anatomical areas" has the same meaning prescribed in  
41 section 11-821.  
42 ~~12.~~ 15. "Specific sexual activities" has the same meaning prescribed  
43 in section 11-821.

1           Sec. 2. Legislative findings

2           Based on evidence of the adverse secondary effects of adult oriented  
3 businesses presented in hearings and in reports made available to the  
4 legislature and on findings discussed in cases, including City of Los Angeles  
5 v. Alameda Books, Inc., 535 U.S. 425 (2002), PAP's A.M. v. City of Erie, 529  
6 U.S. 277 (2002), City of Renton v. Playtime Theatres, Inc., 475 U.S. 41  
7 (1986), California v. Larue, 409 U.S. 109 (1972), Gammoh v. City of La Habra,  
8 395 F. 3d 1114 (9<sup>th</sup> cir. 2005), World Wide Video of Washington, Inc. v. City  
9 of Spokane, 368 F.3d 1186 (9<sup>th</sup> cir. 2004), Center For Fair Public Policy v.  
10 Maricopa County, 336 F. 3d 1153 (9<sup>th</sup> cir. 2003), the legislature finds that:

11           1. Adult oriented businesses, as a category of commercial land uses,  
12 are associated with a wide variety of adverse secondary effects, including  
13 negative impacts on surrounding properties, personal and property crimes,  
14 illicit drug use and trafficking, lewdness, prostitution, potential spread of  
15 disease and sexual assault.

16           2. Adult oriented businesses should be separated from the sensitive  
17 land uses that are identified in section 13-1422, subsection A, Arizona  
18 Revised Statutes, as amended by this act, to minimize the impact of their  
19 secondary effects on these uses.

20           3. There is a substantial government interest in preventing each of  
21 the forgoing negative secondary effects. This substantial government  
22 interest exists independent of any comparative analysis between adult  
23 oriented businesses and nonadult oriented businesses.

24           Sec. 3. Applicability

25           Section 13-1422, subsection A, Arizona Revised Statutes, as amended by  
26 this act, does not apply to preexisting adult oriented businesses that are  
27 established and operating in compliance with all state laws and local  
28 ordinances relating to the location of adult oriented businesses on the  
29 effective date of this act.

30           Sec. 4. Severability

31           If a provision of this act or its application to any person or  
32 circumstance is held invalid, the invalidity does not affect other provisions  
33 or applications of the act that can be given effect without the invalid  
34 provision or application, and to this end the provisions of the act are  
35 severable.

36           Sec. 5. Emergency

37           This act is an emergency measure that is necessary to preserve the  
38 public peace, health or safety and is operative immediately as provided by  
39 law.

**APPROVED BY THE GOVERNOR APRIL 26, 2006.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2006.**